

**George Kim d/b/a Korean Maintenance Co. and  
National Association of Government Employees  
(AFL-CIO/SEIU). Case 31-CA-18678**

September 27, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on February 26, 1991, the General Counsel of the National Labor Relations Board issued a complaint on April 10, 1991, against George Kim d/b/a Korean Maintenance Co., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file a timely answer.

On June 4, 1991, the General Counsel filed a Motion to Transfer Case to and Continue Proceedings Before the Board and for Summary Judgment, with exhibits attached. On June 10, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 21, 1991, the Respondent filed an answer to the complaint and response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." In addition, the undisputed allegations and documentary evidence in support of the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated April 26, 1991, notified the Respondent that the deadline for filing an answer to complaint had expired and that a Motion for Summary Judgment would be filed unless an answer was received by May 3, 1991. Another letter, dated April 29, 1991, from counsel for the General Counsel to the Respondent referred to a telephone conversation on that date with George Kim, the Respondent's owner. This letter included a copy of the complaint and concluded with the following statement:

Per your request, I shall grant you a two-week extension of time to file an Answer to the Complaint, until the *close of business Monday, May*

*13, 1991*. If we do not receive your Answer by that time, I intend to file the Motion for Summary Judgment referred to in my letter of April 26, 1991, which letter you stated prompted your telephone call. [Emphasis in original.]

As previously indicated, the Respondent made no attempt to answer the complaint until June 24, 1991, after receipt of the Notice to Show Cause. The purported answer filed then summarily states: "The Employer denies all of the allegations contained in the complaint herein and each subsection and subparagraph thereof." In the accompanying response to the Notice to Show Cause, counsel for the Respondent contends that Kim "is a Korean foreign national with a limited cursory understanding of the English language, American jurisprudence and more particularly Board proceedings." The response further maintains that all communications between the Board and the Respondent have been in English, so that Kim "was unable to understand the scope and content of the . . . correspondence."

We find no merit in the Respondent's contentions. Prior to the filing of the Motion for Summary Judgment, the Respondent received at least two copies of the complaint and two letters from counsel for the General Counsel which clearly and specifically stated the obligation to file a timely answer and the consequences of failing to do so. In addition, counsel for the General Counsel's April 29, 1991 letter shows that Kim had sufficient comprehension of the import of this correspondence to request an extension of time in order to file an answer. If Kim truly was incapable of preparing an answer to the complaint, the additional 2-week extension of time granted pursuant to his request afforded him a sufficient opportunity to engage the services of counsel to assist him. Nevertheless, no attempt was made to file an answer until June 21, 1991, 7 weeks after the extended filing deadline. Under these circumstances, we find that the Respondent has failed to show good cause for its failure to file a timely answer, and we reject its untimely answer.

In the absence of good cause being shown for the failure to file a timely answer we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a sole proprietorship engaged in business as a janitorial maintenance contractor. Its principal place of business is in Los Angeles, California. In the course and conduct of its operations, the Respondent annually purchases and receives goods or services valued in excess of \$50,000 directly from sellers or suppliers within the State of California. These

sellers or suppliers received goods in substantially the same form directly from outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

About January 11, 1991, the Respondent's owner Kim engaged in certain activity at the U.S. Navy Construction Center at Port Hueneme, California. Specifically, Kim interrogated an employee concerning his general measure of support for the Union and he asked an employee whether he would vote for or against union representation in a Board election to be conducted on January 16, 1991. We find that these acts of interrogation violated Section 8(a)(1).

Also on January 11, 1991, the Respondent discharged James Leivas. Since then, it has failed and refused to reinstate Leivas to his former job. The Respondent has engaged in this conduct because Leivas joined or assisted the Union or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection. We find that the discharge and refusal to reinstate Leivas violated Section 8(a)(3) and (1).

## CONCLUSIONS OF LAW

1. By interrogating employees about their support for the Union and how they intended to vote in a Board representation election, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discharging and refusing to reinstate employee James Leivas because he joined or assisted the Union or engaged in other protected concerted activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully discharged and refused to reinstate James Leivas, we shall order the Respondent to offer Leivas immediate and full reinstatement to his former position, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed, and to make him whole for any loss of earnings that he may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in the manner prescribed

in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, George Kim d/b/a Korean Maintenance Co., Los Angeles, California, his officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union activities and how they intend to vote in a Board representation election.

(b) Discharging and refusing to reinstate employees because they join or assist a union or engage in other protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer James Leivas immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits he may have suffered in the manner set forth in the remedy section of this decision.

(b) Remove from his files any reference to the unlawful discharge and notify Leivas in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at his facility in Los Angeles, California, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Acting Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Acting Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that I violated the National Labor Relations Act and has ordered me to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

I WILL NOT interrogate employees about their union activities and how they intend to vote in a Board election.

I WILL NOT discharge employees for engaging in union or other protected concerted activity.

I WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

I WILL offer James Leivas immediate reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and I WILL make him whole, with interest, for any loss of earnings he may have suffered by reason of his unlawful discharge.

I WILL notify James Leivas that I have removed from my files any reference to his discharge and that the discharge will not be used against him in any way.

GEORGE KIM D/B/A KOREAN MAINTENANCE CO.